(4)
FILED
JAN 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-562

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

RICHARD SPIKA, CHARLES KUEHNE, STEVEN POKORNY, RICHARD ENGEL, RICHARD SHAFER, DANE CUNY, FRANK PARTIPILO, RAYMOND CLARK, MARK GOUTY, PAUL NOLAN, ORIN WALKER, RICH MONTALTO, DANIEL NEUSTADT, DANIEL KELLY, BARBARA DURNIL, RICHARD STICKA, JOSE PEREZ, JAMES GLENNON, CHARLES GUTSMIEDL, Patrolmen of the Village of Lombard, Illinois, and **FRANK J. ESPOSITO, GLENN Q. FOSTER, SCOTT M. RYAN, MICHAEL J. TORRENCE, FRANK D. ANGILERI, ROBERT W. SISLEY, PETER J. DAVIS III, DANIEL A. MUSACCHIO, WILLIAM E. COLEY, JAMES A. PLUNKET, KWAPISZ, JAMES M. BARRON, GREGORY J. ORLANDO, MICHAEL J. DIRIENZO, RICHARD A. WARREN, DONALD V. HANLON,** Firefighters of the Village of Lombard, Illinois,

Petitioners,

VS.

THE VILLAGE OF LOMBARD, ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY BRIEF FOR PETITIONERS

STANLEY H. JAKALA
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733
Attorney for Petitioners

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

BEST AVAILABLE COPY

3PP

In The

Supreme Court of the United States

October Term, 1985

RICHARD SPIKA, ET AL.,

Petitioners,

vs.

THE VILLAGE OF LOMBARD, ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY BRIEF FOR PETITIONERS

In this case the Petitioners have asked this Court to clarify the law regarding the use of F.R.C.P. 60(b) to revive a right of appeal otherwise lost pursuant to F.R.A.P. 4(a)(1). As the Respondent concedes, the circuits are not in agreement on this point. Therefore, the Petitioners respectfully submit that the matter is in need of attention by this Court.

The Respondent seems to suggest that this Court should not consider this case because the Petitioners did not exercise sufficient diligence to warrant Rule 60(b) relief, and should not have been surprised by the Court of Appeals' ruling. In this regard, it should be noted that the Respondent exercised no greater diligence. Counsel for the Re-

spondent did not telephone the district court clerk or otherwise inquire into the status of the case, nor did they offer any opposition to having F.R.C.P. 60(b)(6) invoked to revive the right to appeal in this instance. This would suggest that, prior to the case at bar, counsel for both sides had assumed that the Seventh Circuit would follow the District of Columbia Circuit's practice of allowing Rule 60(b)(6) relief in situations where the clerk failed to give proper notice to litigants. *See Expeditions Unlim. Aquatic Enter., Inc. v. Smithsonian Institute*, 500 F.2d 808 (D.C. Cir. 1974).

The Respondent also suggests that Petitioners' concerns about the Court of Appeals' decision on the clerk's office are unfounded. The Petitioners respectfully submit that this Court can take judicial notice of the docket congestion in the federal courts, with the resulting widespread failures in giving proper notice to litigants that are occurring. Given that, it does not seem unreasonable to suggest that the Court of Appeals' decision will burden the system to an even greater extent.

Respectfully submitted,

STANLEY H. JAKALA
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733

Attorney for Petitioners